



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, on its
own behalf and as trustee on behalf of the
Lummi Nation,

Plaintiff,

v.

KEITH E. MILNER and SHIRLEY A.
MILNER, *et al.*,

Defendants,

THE LUMMI-NATION,

Intervenor - Plaintiff

No. C01-809 RBL

ORDER GRANTING
DEFENDANTS' MOTION
TO MODIFY OR
SUSPEND INJUNCTION
PENDING APPEAL



01-CV-00809-ORD

This matter is before the Court on defendants' Motion to Modify or Suspend Injunction Pending Appeal. In June, 2003, the district court ordered defendants, owners of four waterfront homes in Whatcom County, to remove all shore defense structures situated seaward of mean high water. As of this date, defendants have taken no action to remove the structures. Defendants dispute the district court's ruling and request a suspension of the injunction pending appeal.

Pursuant to Fed. R. Civ. P. 62 (c), "[w]hen an appeal is taken from an interlocutory or final judgment granting . . . an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers

ORDER GRANTING STAY OF INJUNCTION

1 proper for the security of the adverse party." In determining whether to stay an injunction, the moving
2 party must demonstrate "either (1) a combination of probable success on the merits and the possibility of
3 irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its
4 favor." *Tribal Village of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988). The court may also
5 consider the public interest in certain cases. *Id.*

6 Based on the possibility of irreparable injury if shore defense structures are removed, and in the
7 interest of preserving the status quo pending appeal, the Court finds that a stay of the injunction would be
8 appropriate. The stay, however, shall be conditioned upon defendants' payment of fair market rental
9 value to the Lummi Nation. The exact amount of each defendant's payment shall be determined using the
10 same method of calculation that was used in determining the amounts currently paid by neighboring
11 homeowners.

12 For all of the foregoing reasons, defendants' Motion to Modify or Suspend Injunction Pending
13 Appeal (Dkt. #267) is **GRANTED**. Plaintiff's related Motion for Leave to File Surreply (Dkt. #277) is
14 **GRANTED**.

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16 DATED this 10th day of August, 2004.

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20 RONALD B. LEIGHTON
21 United States District Judge
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